

## ELITHION, LLC LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into between Elithion, LLC, a Colorado limited liability company (“Elithion”) and \_\_\_\_\_ (“Licensee”).

### 1. Definitions

1.1 "Documentation" means the electronic and/or hard copy user manual and technical information supplied with the Products.

1.2 "Effective Date" means the last date written below.

1.3 “Parties” means Elithion and Licensee.

1.4 "Products" means the Elithion Battery Management System Integrated Circuits with the specifications set forth on Exhibit A.

1.5 “Services” means the Elithion services set forth on Exhibit A.

### 2. Grant of rights; Restrictions

2.1 Subject to all the terms and conditions of this License Agreement, Elithion hereby grants Licensee a perpetual (terminable only as provided in Section 6), limited, worldwide, nonexclusive, nontransferable license to install and use the Products and Documentation that Licensee may order during the term of this Agreement only for its own internal business use and for integration with products and services distributed and sold by Licensee. This license is for such use of the Products by Licensee only.

2.2 Except as expressly permitted in this License Agreement, Licensee shall not, and shall not permit others to: (i) modify, translate, create derivative copies of, or copy the source code, internal structure, organization or any other aspect of the Products or any parts thereof; (ii) reverse engineer, decompile, disassemble the Products; (iii) distribute, sublicense, assign, share, sell, rent, lease or otherwise transfer the Products or Licensee's right to use the Products; (iv) remove or modify any copyright, trademark, or other proprietary notices of Elithion affixed to the media containing the Products or Documentation or contained within the Products or Documentation; (v) use the Documentation for any purposes other than in connection with the Products; or (vi) use the Products, Documentation or Services in any manner not expressly authorized by this License Agreement.

2.3 The Products are not designed or intended for use in military or life support applications. Licensee shall not and shall not permit others to use the Products in military or life support applications.

### 3. Proprietary rights

Elithion has sole and exclusive ownership of all right, title, and interest in and to the Products, Documentation and Services, including all copyright and any other intellectual property rights therein. This License Agreement conveys a limited license to use the Products and

Documentation and shall not be construed to convey title to or ownership of the Products or Documentation to Licensee. All rights in and to the Products and Documentation not expressly granted to Licensee are reserved by Elithion.

#### **4. Fees**

Licensee shall pay to Elithion fees (“Fees”) at the prices, and on the terms and conditions, set forth in Exhibit B attached hereto for the Products and Services. Failure of Licensee to fully comply with the payment terms contained herein may result in termination of Elithion's obligations under the Agreement pursuant to Section 6, and Elithion may terminate the Agreement in its sole discretion in addition to any other legal or equitable remedies it may have. Elithion may change such prices, terms and conditions from time to time in its discretion without notice to Licensee. In the event that Elithion raises its Fees, all orders for the applicable Products placed prior to the effective date of the increase, for delivery prior to such date, shall be invoiced at the lower price.

#### **5. Orders and Delivery**

Licensee shall order Products and Services from Elithion using such forms, procedures, and minimum order requirements as Elithion may prescribe from time to time. All orders shall be subject to acceptance and approval by Elithion in its discretion. All orders shall be governed exclusively by the terms and conditions of this Agreement notwithstanding any contrary or additional preprinted terms of any other document.

#### **6. Term & Termination**

6.1 This License Agreement shall commence on the Effective Date and continue in effect indefinitely, unless terminated in accordance with Section 6. Elithion may terminate this Agreement immediately in the event Licensee fails to cure any breach of a payment obligation hereunder within ten (10) days after written notice from Elithion describing the breach. Either party may terminate this Agreement immediately at any time if: (a) the other party commits a breach of a material obligation hereunder which is not subject to cure; or (b) the other party commits a breach of a material obligation hereunder which is subject to cure (other than a payment breach) and fails to cure such material breach within 30 days after written notice.

6.2 Upon any termination of this License Agreement, (a) the rights and licenses granted to Licensee herein shall terminate; (b) Licensee shall cease all use of the Products; (c) Licensee shall return to Elithion all of the Products and Documentation in Licensee's possession or under its control; and (d) Licensee shall certify in writing to Elithion its compliance with the foregoing. Sections 1, 3, 4 (to the extent of unpaid obligations), 6, 7, 8, 9 and 10 shall survive any termination of this License Agreement.

#### **7. Disclaimer of Warranties**

THE FOLLOWING IS WITHOUT PREJUDICE TO ANY RIGHTS LICENSEE MAY HAVE AT LAW WHICH CANNOT LEGALLY BE EXCLUDED OR RESTRICTED. ELITHION PROVIDES THE PRODUCTS, DOCUMENTATION AND SERVICES "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS, IMPLIED OR STATUTORY,

INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. LICENSEE ACKNOWLEDGES THAT NO PROMISE, REPRESENTATION, WARRANTY OR UNDERTAKING HAS BEEN MADE OR GIVEN BY ELITHION IN RELATION TO THE PROFITABILITY OF OR ANY OTHER CONSEQUENCES OR BENEFITS TO BE OBTAINED FROM THE DELIVERY OR USE OF THE PROGRAM, DOCUMENTATION OR SERVICES. LICENSEE HAS RELIED UPON ITS OWN SKILL AND JUDGMENT IN DECIDING TO ACQUIRE THE PRODUCTS AND DOCUMENTATION FOR ITS USE. IN NO EVENT DOES ELITHION WARRANT THAT THE PRODUCTS, DOCUMENTATION AND SERVICES ARE ERROR FREE OR THAT LICENSEE WILL BE ABLE TO USE THE PRODUCTS, DOCUMENTATION AND SERVICES WITHOUT PROBLEMS OR INTERRUPTIONS.

## **8. Limitations of liability**

8.1 LICENSEE'S SOLE REMEDY WITH RESPECT TO ANY CLAIMS ARISING OUT OF THIS LICENSE AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE MONIES PAID BY LICENSEE TO ELITHION UNDER THIS LICENSE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

8.2 IN NO EVENT SHALL ELITHION BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS AND GOODWILL, BUSINESS OR BUSINESS BENEFIT, OR THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS BY LICENSEE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CIRCUMSTANCES SHALL ELITHION BE LIABLE FOR ANY FAILURE OF THE PRODUCTS TO PERFORM IN ACCORDANCE WITH THE DOCUMENTATION, OR AT ALL, RESULTING FROM A FAILURE BY THE LICENSEE TO COMPLY WITH THE MINIMUM REQUIREMENTS. ADDITIONALLY, LICENSEE ACKNOWLEDGES THAT WHILST THE PRODUCTS MAY BE USED IN COMBINATION WITH THIRD PARTY PRODUCTS, ELITHION BEARS NO LIABILITY, WHATSOEVER ARISING, FOR ANY LOSS, DAMAGE OR COST THAT ARISES FROM A FAILURE OF THE PRODUCTS TO INTEGRATE WITH LICENSEE OR THIRD PARTY PRODUCTS.

## **9. Confidential Information.**

9.1 Each Party acknowledges that confidential information, including trade secrets and confidential technical, financial and business information (collectively, "Confidential Information"), may be exchanged between the Parties pursuant to this Agreement. Each party shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the other party. Each party agrees that it will not disclose or use the Confidential Information of the other party except for the purposes of this Agreement and as authorized herein. Each Party will promptly report to the other any unauthorized use or disclosure of Confidential Information that the other becomes

aware of and provide reasonable assistance in the investigation and prosecution of any such unauthorized use or disclosure.

9.2 Limitation. Notwithstanding Section 9.1 the recipient of Confidential Information may use or disclose the Confidential Information to the extent that such Confidential Information is: (i) already known by the recipient without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the Recipient, (iii) rightfully received from a third party without any obligation of confidentiality, (iv) independently developed by the recipient without use of the Confidential Information of the Disclosing Party, (v) approved by the Disclosing Party for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient provides the other party with notice of such requirement prior to any such disclosure and takes all reasonable steps available to maintain the information in confidence.

## **10. Indemnification**

Licensee shall release, hold harmless, and indemnify Elithion against any liability, cost or expense, of any nature whatsoever that Elithion, its officers, directors, employees, successors and assigns may sustain or incur as a result of any suit, proceeding, claim for damages or other legal action brought by a third party based on a claim that arises as a result of : (a) Licensee's breach of any terms, conditions, representations set forth herein; (b) any modification that was made to the Products by Licensee or (c) any negligence or willful misconduct of Licensee.

## **11. General**

11.1 This Agreement constitutes the entire agreement of the parties, supersedes any prior and contemporaneous oral or written understanding as to the subject matter hereof, and excludes all implied representations, conditions, warranties, and other terms. Each party acknowledges that it is entering into this Agreement as a result of its own independent investigation and not as a result of any representation of the other party not contained herein.

11.2 Except for the terms of this Agreement which may be unilaterally modified by Elithion from time to time as provided herein, this Agreement may be modified only by a writing signed by the party to be charged. A waiver of any provision or breach is no waiver of any other provision or breach.

11.3 Except as expressly provided elsewhere in this Agreement, neither party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to earthquake, fire, flood, war, embargo, export controls, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority.

11.4 Licensee shall pay or reimburse Elithion for all national, federal, state, local or other taxes and assessments of any jurisdiction incurred or otherwise payable by Licensee (except taxes, other than withholding taxes, imposed on Elithion's income), including sales or use taxes, property taxes, withholding taxes or otherwise.

11.5 All notices and other communications hereunder shall be given in writing and delivered (a) by personal delivery, by prepaid overnight or international courier service to the addresses set forth on the signature page of this Agreement, or (b) by facsimile to such facsimile number as may be provided in writing by a party. Notices are deemed given on receipt or attempted delivery (if receipt is refused).

**11.6 EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASIS OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.**

11.7 This Agreement shall be governed and construed, and all arbitrations hereunder shall be determined, in accordance with the laws of the State of Colorado, without regard to its conflicts of laws rules.

11.8 In the event of any litigation or arbitration hereunder, the court or arbitrator shall award costs and reasonable attorneys' fees to the prevailing party.

11.9 The invalidity or unenforceability of any provision in this Agreement will in no way affect the validity or enforceability of any other provision.

11.10 Neither Party may assign any of its rights or obligations under this Agreement to any third party without other Party's consent except that Elithion, at its option, may assign this Agreement in connection with a sale of Elithion or substantially all of the assets of Elithion. Any attempted transfer, assignment or delegation in violation of the foregoing will be void.

Elithion, LLC

Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Davide Andrea

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
3393 Iris Ave Ste 110 Boulder CO 80301 USA

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

## Exhibit A: Definition of Products and Services

Products are items designed, produced and or sold by Elithion.

Services are any services provided by Elithion.

## Exhibit B: Fees

<b>Item</b>	<b>Per</b>	<b>Price each</b>	<b>Price validity</b>
EL01 integrated circuit	Per cell in series	\$ 3	5 years
EL02 integrated circuit	Per system	\$ 20	5 years
Order fee	Per order	\$ 500	5 years
Set-up for cell boards	Once only	\$ 2000	1 year
Set-up for controllers	Once only	\$ 3000	1 year
Additional consulting fees, as requested by client	Per hour, in 15 minute increments, or portion thereof	\$ 200	1 year